



Paper No. 5

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In re Application of
Nishiyama et al
Application No. 09/834,085
Filed: April 12, 2001
Attorney Docket No. 9281-3943

OFFICE OF PETITIONS
:
: **DECISION GRANTING**
: **PETITION**
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This is a decision on the petition filed July 30, 2001, requesting that the above-identified application be accorded a filing date of April 12, 2001, rather than the presently accorded filing date of April 11, 2001. The petition is properly treated under 37 CFR 1.10(d).

Petitioners request the later filing date on the basis that the application was deposited in Express Mail service on April 12, 2001, pursuant to the requirements of 37 CFR 1.10. The petition is accompanied by a copy of Express Mail label No. EL677509309US showing a "date-in" of April 11, 2001. The same Express Mail label number is found on the original application papers. In addition, petitioners submitted (1) a copy of their Express Mail Log for April 12, 2001 that shows a package bearing Express Mail label EL677509309US was mailed on April 12, 2001, (2) the firm's docket entry card with April 12, 2001 listed as the date of entry in Express Mail, and (3) a United States Postal Service (USPS) on-line shipment history showing April 12, 2001 as the date of deposit in Express Mail.

A review of the Office's USPS Express Mail Information Database reveals that a package with Express Mail label EL677509309US affixed thereto was accepted by the USPS on April 12, 2001.

Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and

within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS. Any statement submitted in support of such a showing pursuant to this paragraph must be a verified statement if made by a person other than an employee of the USPS or a practitioner as defined in s 10.1(r) of this chapter.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS."


The petition filed July 30, 2001, is accompanied by the corroborating evidence required by the rule. Accordingly, the petition is granted.

No fee has been or will be charged in connection to this petition.

The application is being returned to Office of Initial Patent Examination for correction of the filing date to April 12, 2001 and the mailing of a corrected filing receipt.

Thereafter, the application will be forwarded to Technology Center 2600 for examination in due course.

Any inquiries related to this decision should be directed to the undersigned at (703) 308-6712.


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Office of the Deputy Commissioner
for Patent Examination Policy